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**COLORADO STATE CAPITOL
200 EAST COLFAX AVENUE SUITE 091
DENVER, COLORADO 80203-1716**

**TEL: 303-866-2045 FAX: 303-866-4157
EMAIL: OLLS.GA@STATE.CO.US**

MANAGING SENIOR ATTORNEYS
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H. Pierce Lively Megan Waples

MEMORANDUM

TO: Committee on Legal Services

FROM: Brita Darling, Office of Legislative Legal Services¹

DATE: January 29, 2019

SUBJECT: Rules of the Colorado State Board of Education, Department of Education, concerning the administration of the waiver of statute and rule, 1 CCR 301-35 (LLS Docket No. 180441; SOS Tracking No. 2018-00413).²

Summary of Problem Identified and Recommendation

Section 22-2-117 (1)(b)(VII), C.R.S., prohibits the State Board of Education (State Board) from waiving any requirements specified in section 22-1-130, C.R.S., relating to notification to parents of alleged criminal conduct by *school district employees* (parental notification requirements). But the State Board's Rule 2.6(o) implementing section 22-2-117 (1)(b)(VII), C.R.S., prohibits the State Board from waiving parental notification requirements relating to alleged criminal conduct by charter school employees, *not school district employees*. **Because Rule 2.6(o) conflicts with the statute, we recommend that Rule 2.6(o) of the rules of the State Board of Education concerning the administration of the waiver of statute and rule not be extended.**

¹ Research conducted and draft memorandum prepared by Samantha Bloch, attorney intern for the Office of Legislative Legal Services.

² Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2019, unless the General Assembly acts by bill to postpone such expiration.

Analysis

1. **The State Board's Rule 2.6(o) conflicts with the statute because the rule refers to *charter school* employees, but the section being implemented by the rule refers to *school district* employees.**

The State Board has broad authority to promulgate rules concerning the general supervision of the public schools, the department, and various educational programs,³ and, pursuant to section 22-2-117 (5), C.R.S., the State Board shall promulgate rules to implement the school district waiver application process.

With respect to parental notification requirements, section 22-2-117 (1)(b)(VII), C.R.S., provides in pertinent part:

22-2-117. Additional power - state board - waiver of requirements - rules.

(1)(b) The state board shall not waive any of the requirements specified in any of the following statutory provisions:

(VII) Any provisions of section 22-1-130, relating to notification to parents of alleged criminal conduct by **school district** employees. **(Emphasis added)**

However, in its rules regarding waiver requests by school districts, the State Board states in Rule 2.6(o):

2.00 Waiver Requests by School Districts

2.6 Sections of Law Ineligible for Waiver

The State Board of Education shall not waive any of the requirements specified in the following statutory provisions:

2.6(o) Any provisions of section 22-1-130, relating to notification to parents of alleged criminal conduct by **charter school** employees. **(Emphasis added)**

Because Rule 2.6(o) implements the prohibition on waiver of parental notification requirements for school districts but refers to *charter school* employees *instead of school district employees*, it directly conflicts with the statute.

³ § 22-2-107 (1)(c), C.R.S.

Recommendation

We therefore recommend that Rule 2.6(o) of the rules of the State Board of Education concerning the administration of the waiver of statute and rule not be extended because Rule 2.6(o) conflicts with the statute it is implementing.